

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:B04
PLR-129427-10
Date:
November 08, 2010

Parent: =

Taxpayer: =

State A: =

Year 1: =

Year 2: =

Year 3: =

Date A: =

Date B: =

Amount 1: =

Amount 2: =

Dear :

This is in response to a request dated July 13, 2010, filed by Parent on behalf of Taxpayer for a ruling granting an extension of time for making the election under section 831(b) of the Internal Revenue Code. The request is made in accordance with and seeks relief pursuant to section 301.9100-3 of the Procedure and Administration Regulations.

FACTS

Parent is the common parent of an affiliated group of corporations, which includes Taxpayer. Parent's subsidiaries and affiliates are providers of nursing homes and rehabilitation services in the United States. Nursing homes are operated by certain subsidiaries of Parent, which are Taxpayer's affiliates. Taxpayer represents that it is subject to tax under section 831. Taxpayer does not file a National Association of Insurance Commissioners (NAIC) annual statement. However, Taxpayer does file a State A Captive annual Report with the State A Director of Insurance. Taxpayer is exempt from filing the NAIC annual statement requirements because it is a single parent captive insurance company. Taxpayer provides the affiliates with coverage for professional liability, professional liability defense costs, general liability defense costs, and product liability. There is a single policy in which the affiliates are listed as insured. No affiliates own stock in Taxpayer.

In Year 1, Parent engaged an accounting firm to prepare its Year 1 consolidated federal income tax return. In the course of this engagement, the accounting firm determined that Taxpayer's premiums for Year 1 were Amount 1. The accounting firm advised an accountant for Parent who was responsible for preparing the Year 1 consolidated federal income tax return that Taxpayer was not eligible for an election under section 831(b) because Taxpayer's total earned premiums exceed the statutory limitation. The accounting firm incorrectly used Taxpayer's total earned premiums rather than Taxpayer's net written premiums which were Amount 2. While performing the Year 2 financial audit for Parent in Date A, Parent's outside auditor discovered that the accounting firm improperly used Taxpayer's total earned premiums rather than Taxpayer's net written premiums in applying the section 831(b) limitation to Taxpayer for the Year 1 tax year. Parent in relying on the accounting firm's tax advice did not make the election under section 831(b) for Taxpayer on Parent's timely filed consolidated Year 1 federal income tax return. Parent timely filed its consolidated Year 2 federal income tax return on Date B.

Parent further represents that granting relief by the Internal Revenue Service will not result in a lower tax liability than Taxpayer would have had if the section 831(b) election was timely made.

LAW AND ANALYSIS

Insurance companies other than life insurance companies are taxable under section 831(b) on their taxable income. However certain insurance companies can elect to pay an alternative tax provided in section 831(b)(2)(A) on only their taxable income. Section 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by section 831(b). Pursuant to section 310.9100-8(a)(2)(i), this election must be made on a timely filed tax return, including extensions, for the first taxable year for which the election is effective.

Under section 301.9100-1(c), the Commissioner may grant reasonable extension of time pursuant to sections 301.9100-2 and 301.9100-3 to make a regulatory election (but no more than 6 months except in the case when the taxpayer is abroad), under all subtitles of the Code except subtitles E, G, H and I. Section 831(b) is part of subtitle A.

Section 301.9100-3 provides that requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 (automatic extension) must be made pursuant to section 301.9100-3. Relief will be granted under section 301.9100-3 when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not be prejudice the interests of the government.

A taxpayer is deemed to have acted reasonably and in good faith under section 301.9100-3(b)(1) if the taxpayer: (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the advice of the Internal Revenue Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer and the tax professional failed to make or advise the taxpayer to make the election.

Under section 301.9100-3(c)(1), the Commissioner will grant a reasonable extension of time to make the regulatory election only when the interest of the government will not be prejudiced by the granting of relief.

Based solely on the facts submitted and the representations made, we conclude that the requirements of sections 301.9100-1 and 302.9100-3 have been satisfied. Accordingly, Taxpayer is granted an extension of time until 60 days following the date of this letter to make the election to be subject to the alternative tax provided in section 831(b)(2)(A) for Year 1.

Notwithstanding that an extension of time is granted under section 301.9100-3 to make an election under section 831(b)(2)(A), additions, penalties and interest that would otherwise be applicable, if any, continue to apply with respect to the tax return for Year 1.

A copy of this ruling letter should be attached with Taxpayer's federal income tax returns for Years 1, 2, and 3.

This ruling is directed only to the taxpayer who requested it. Section 6110 (k)(3) provides that it may not be used or cited as precedent.

No ruling has been requested and none is expressed as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representative.

Sincerely,

/S/

DONALD J. DREES, JR.
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Financial Institutions and Products)